IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

CRL.A.No. 492 of 2002()

CC.403/1997 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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APPELLANT: COMPLAINANT

V.KRISHNASWAMY, MANAGING PARTNER,
ASSOCIATED AUTO ENGINEERING WORKS,
PALLIMUKKU, KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BABU, VASANTHA VILASOM,KURINGANOOR P.O.,
OYOOR, KOLLAM.

BY ADV. SRI.ANIL K.NARENDRAN
PUBLIC PROSECUTOR. SRI AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.492 of 2002-B

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Dated this the 11th day of September, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.403/1997 in the file of the Chief Judicial Magistrate, Kollam, who had initiated proceedings under Section 138 of the Negotiable Instruments Act. The impugned cheque is with respect to Rs.10,000/- said to have been issued on 29/01/1997 towards the repairing charges of the vehicle of the accused, that is, a mini lorry bearing No.KL.2/8551. The cheque when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P6. PW.2 is the complainant. According to the complainant, the cheque was issued towards the amount due for the repairing charges of the vehicle. It was brought out that he had addressed the insurance company on 31/07/1996 that the amount due towards the repairing charges has been received. He has also stated before the court that the bills and records are kept in his office. The same has not been produced. It is pertinent to note that the cheque is dated 29/01/1997, that is, six months subsequent to

addressing the company that the entire amount has been received. PW.2, the complainant has also admitted that the rest of the amount except the cheque amount due towards the repairs of the mini lorry has been paid. It is suggested that there was some dispute with respect to the quality of the repair done and, hence, the blank cheque given to him was filled up and submitted.

In the circumstances, I find that the complainant has failed to establish that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act.

The criminal appeal is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.492 of 2002-B

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J U D G M E N T

11th September, 2007